

Internal Revenue Service

Number: **202009015**

Release Date: 2/28/2020

Index Numbers: 1362.00-00, 1362.01-00,
1362.01-02

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-114389-19

Date:
December 03, 2019

LEGEND

X =

A =

B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

State =

Dear :

This letter responds to a letter dated June 14, 2019, and subsequent correspondence submitted on behalf of X requesting a ruling under § 1362(g) of the Internal Revenue Code (Code).

FACTS

X was incorporated in State on Date 1 and made an S corporation election effective Date 2. On Date 3, A, the sole shareholder of X, revoked X's S corporation election effective Date 4. Pursuant to a Stock Purchase Agreement dated Date 5, A sold shares in X to B and the shares were transferred to B on Date 6. On Date 7, X redeemed all of A's remaining shares, leaving B as the sole shareholder. X is requesting permission to reelect to be an S corporation effective Date 7, prior to the expiration of the five-year waiting period imposed by § 1362(g).

LAW AND ANALYSIS

Section 1362(a) provides that except as provided in § 1362(g), a small business corporation may elect to be an S corporation.

Section 1362(g) provides that if a small business corporation has made an election under § 1362(a) and if such election has been terminated under § 1362(d), the corporation (and any successor corporation) is not eligible to make an election under § 1362(a) for any taxable year before its fifth taxable year which begins after its first taxable year for which the termination is effective, unless the Secretary consents to the election.

Section 1.1362-5(a) of the Income Tax Regulations provides that the corporation has the burden of establishing that under the relevant facts and circumstances, the Commissioner should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation on the date of the termination tends to establish that consent should be granted. In the absence of this fact, consent ordinarily is denied unless the corporation shows that the event causing termination was not reasonably within the control of the corporation or shareholders having a substantial interest in the corporation and was not part of a plan on the part of the corporation or of such shareholders to terminate the election.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X has met its burden under § 1.1362-5(a). We grant permission for X to reelect to be an S corporation effective Date 7. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553, Election by a Small Business Corporation, with the appropriate service center effective Date 7, within 120 days following the date

of this letter, then such election will be treated as timely made for X's taxable year beginning Date 7. A copy of this letter should be attached to the Form 2553.

Except for the specific ruling above, we express or imply no opinion concerning the federal income tax consequences of the facts of this case under any other provision of the Code including whether X was or is a small business corporation under § 1361(b).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter ruling to your authorized representatives.

Sincerely,

Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy of this letter
Copy of this letter for § 6110 purposes

cc: